

Glenda Wiles

From: George Corn
Sent: Monday, September 10, 2007 3:12 PM
To: Glenda Wiles
Cc: Greg Chilcott; Alex Beal; Alan Thompson; James Rokosch; Carlotta Grandstaff; Kathleen Driscoll; 'Michael Howell'
Subject: FW: Moses Baker Subdivision?
Attachments: Letter to Howell 08-06-07.doc

Glenda,

I have attached the letter I sent to Michael which is what I believe he wants to meet about. The letter lays out the legal arguments as to why the matter cannot be prosecuted criminally. In reflecting upon the matter I don't think a meeting would be productive unless there is some written analysis as to why my analysis is flawed. I'm sending the C's a copy of my analysis and will also cc Michel with this email.

RECEIVED

SEP 10 2007

Ravalli County Commissioners

| | | | | |
|--|--|--|--|--|
| | | | | |
|--|--|--|--|--|

B.C.C.

This email + copy of this letter from George to Michael Howell was precipitated by Michael's request to me to place this issue on the calendar with the commissioners. (Feeling that we needed George @ the meeting + visiting with him - it appears a meeting might not take place)

Glenda



RAVALLI COUNTY ATTORNEY

George H. Corn, County Attorney
T. Geoffrey Mahar, Chief Deputy
John Bell, Deputy
Karen Mahar, Deputy
William E. Fulbright, Deputy
Alex Beal, Deputy

Ravalli County Courthouse
205 Bedford, Suite C
HAMILTON, MT 59840-2853

Phone (406) 375-6750
Fax (406) 375-6731

August 6, 2007

Mr. Michael Howell
609 Middle Burnt Fork Road
Stevensville, MT 59870

RE: Stephen Peckinpaugh Un-permitted Access

Dear Michael:

I must apologize. It appears that my previous letters have made a promise that the law will not let me keep. As you know, this matter dates back some time, and I had considered it closed at least twice during that period, so my memory is not what it could be. However in reviewing this matter in preparation to charging Mr. Peckinpaugh, it is clear to me that Mr. Peckinpaugh's conduct does not constitute trespassing, nor does probable cause exist to file charges for a criminal violation of the Ravalli County Subdivision Regulations.

Here is why. The simpler of the two charges is trespassing. A person must knowingly enter or remain unlawfully in or upon the premises of another. As all land from Middle Burnt Fork Road south belongs to Mr. Peckinpaugh, he is not doing anything upon the premises "of another." I think that this may have come from a misunderstanding of what this no ingress/egress zone consisted of. I can only assume that I understood it to be an easement for the benefit of the county, or some other mechanism that transferred some form of title to the land, rather than a mere plat restriction. A person cannot trespass upon his own land, and that is the situation we have here.

The more complex problem was related to a violation of the Ravalli County Subdivision Regulations. As you are well aware, the final plat showed a no ingress/egress zone along Middle Burnt Fork Road, which was a condition placed upon the subdivision approval. A violation of that would constitute a misdemeanor, so long as it was validly enacted. Unfortunately, therein lays the rub. Research has found: under § 3-2-7(d) of the 1997 regulations (the ones in place at the time the subdivision was approved), "The Board of County Commissioners may as a condition of approval require the sub-divider to reasonably mitigate potentially significant adverse impacts. Such means to minimize the identified impacts may include the following: ...(4) relocate or redesign an access point(s) to a private, county, or state road(s)."

However, pursuant to MCA § 76-3-620 (1997), for such a condition to be valid, the Commissioners must have provided a written statement to the subdivision applicant, listing the evidence that justifies the imposition of the condition. Unfortunately in preparing to charge the matter my review of the Commissioners' conditional approval shows none of that. The only reference is §3(c)(1). "Public Road System. It is estimated that at build-out, this subdivision will generate (sic) vehicular trips per day. Traffic on Middle Burnt Fork Road, a county road, will increase and place added burden on the County Road Department for maintenance." Every subdivision approval will increase traffic on some County road. That there will be some undisclosed increase in the number of trips is insufficient to justify a specific condition. This is wholly insufficient to meet even the probable cause threshold to file charges in this case.

Frankly I was dismayed to see such an inadequate statement since I suspect others done at the same time have the same defect. Unfortunately many of the findings of fact issued by the Commission at that time were generally inadequate and unsupported. In the decade that has passed, however, the findings that the Planning Department recommends and that the Commissioners have been issuing have come light years forward. While it is likely no solace to you, at least know that subdivisions approved today have enforceable conditions.

I note that the covenants filed with this property detail the same no ingress/egress zone along Middle Burnt Fork Road. While I cannot provide you with civil legal advice, I strongly advise you to consult with your private attorney to pursue a remedy as these obstacles would not apply to a violation of your covenants.

Sincerely,

George H. Corn
Ravalli County Attorney

GHC:hs